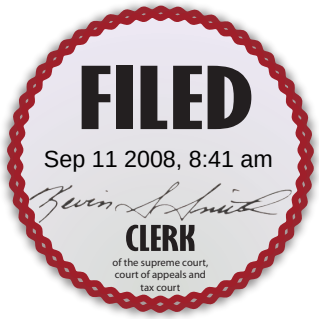

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IN THE
COURT OF APPEALS OF INDIANA

ADELL LYLES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0712-CR-1076
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0609-FA-166924

September 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Adell Lyles appeals his twelve convictions for rape, deviate sexual conduct, attempted deviate sexual conduct, burglary, three counts of criminal confinement, three counts of robbery, and two counts of theft. Specifically, he argues that the evidence is insufficient to support his convictions, that his convictions violate Indiana's prohibition against double jeopardy, and that his aggregate sentence of ninety years is inappropriate. We affirm.

Facts and Procedural History

The facts most favorable to the verdict reveal that on the evening of June 22, 2002, former Lawrence North High School students Justin Jackson, Drew Black, and S.T., all of whom were nineteen years old, were watching the movie Traffic in Jackson's apartment at Lake Castleton Apartments on the north side of Indianapolis when they heard the blinds on the sliding glass door start to rustle. The group of friends looked over to see an African-American male enter the apartment with a rifle. The intruder yelled, "Get the f*** on the ground. Don't look at me," and the group of friends complied with his order. Tr. p. 75. Several other males then entered the apartment.[1]

The intruders took various cords from throughout the apartment and tied up Jackson's, Black's, and S.T.'s hands and feet. The intruders also gagged and blindfolded them, which hindered their ability to see what was going on and to identify what intruder was doing what. The intruders asked for money, "weed," and "anything" they could get their hands on. *Id.* at 78. They searched Jackson's, Black's, and S.T.'s belongings and

[1] The victims were uncertain whether there were three or four intruders in total.

pockets and took their wallets, keys, cash, bank cards, cell phones, and jewelry. Once the intruders located Jackson's safe, they pointed the gun at him and demanded the combination. Upon discovering the good quality of marijuana inside the safe, they were excited "like [it was] Christmas." *Id.* at 116. While the intruders ransacked the apartment, one of them stopped to comment about S.T.'s good looks, "Damn. Look at this white bit**." *Id.* at 81. At this point, the group of friends was separated; Black was taken to the bathroom, and S.T., whose hands and feet were still bound, was taken to the bedroom. Once in the bedroom, one of the intruders pulled down S.T.'s pants and underwear and lifted up her shirt. He then proceeded to have vaginal intercourse with S.T. and ejaculated on her buttocks. Afterwards, he wiped himself and S.T. off with the comforter from the bed. Another intruder yelled, "[A]re you done yet?" and then proceeded to have anal intercourse with S.T. *Id.* at 294. When he removed his erect penis and tried to reinsert it, S.T. squeezed her rectum to prevent re-penetration. As a result, he hit her and called her a "white bit**." *Id.* at 295. When S.T. still would not stop squeezing, someone placed a gun between her legs and told her "to open up or else they would open [her] up." *Id.* at 296. Another intruder then tried to have oral sex with S.T. When he tried to insert his penis into S.T.'s mouth, she refused to open it. He then hit her on the head and took the gag that was around her mouth and pulled it back and forth across her gums in an attempt to get her to open her mouth, but she did not. The intruders also sprayed shaving cream in S.T.'s eyes and hair, and S.T. felt something "oozing" down her back. *Id.* at 298.

Just then there was a knock on the apartment door. Ralph Bridgeforth, a private security officer for the apartment complex, received a loud noise complaint regarding Jackson's apartment and was there to investigate. Bridgeforth heard people inside the apartment moving around "frantically" and items being thrown. *Id.* at 22. He then saw several males running south of Jackson's apartment. Bridgeforth returned to this vehicle, which was parked on the north side of the apartment, and drove to the area where he believed the suspects were running. He saw an African-American male pacing around the area. Bridgeforth asked the male for his identification card, which provided the name of "Adell Lyles." Bridgeforth copied Lyles' information and, after confirming that Lyles was not on the apartment complex's no-trespass list, let him go. Bridgeforth then returned to Jackson's apartment.

In the meantime, after the intruders ran out of Jackson's apartment, Black was able to untie himself and then Jackson. They proceeded to the bedroom, where they found S.T. partially naked and hysterical. She had shaving cream and eggs on her body. Her hands were bound so tightly that they had to use a knife to free her. By this point, Bridgeforth arrived at the apartment and called the police. When the police arrived, they observed that Jackson's apartment had been ransacked and was in disarray. There was a rifle on a chair by the sliding glass door. There were various cords in the living room, bathroom, and bedroom. They found items bagged up in pillowcases and trash bags, and there was a drawstring bag containing CDs, videos, batteries, and beer on the lawn.

S.T. was taken to Methodist Hospital and underwent a rape exam, including administering a rape kit that tested for the presence of sperm. During the exam, the nurse

practitioner discovered multiple abrasions to S.T.'s labia, two lacerations to her rectum, and swelling in her anal area. Because Jackson, Black, and S.T. were not able to identify any of the intruders, no immediate arrests in the case were made.

In early 2003, Christopher Fisher was incarcerated in the Marion County Jail for an auto theft conviction when he met Lyles, who was being held on a matter unrelated to this case. They were housed in the same area and got to know each other. One day, Lyles told Fisher that he, his brother, and a friend had robbed some people at Lake Castleton Apartments. Lyles said that they tied up the occupants of the apartment. Next, all three of them raped a girl and ate some food but then panicked when there was a knock at the door, and they left behind some items, including a rifle, in the apartment. Lyles also said he stuck the barrel of a rifle "up [the girl's] a**," but he was not worried about the rifle because his fingerprints were not on it. *Id.* at 164. Fisher reported this conversation to a guard and was contacted by a detective in April 2003, after he had been released from jail.

Detective Rebecca Buttram, the detective in charge of this case, learned in her investigation that the security guard at Lake Castleton Apartments had stopped someone in the vicinity of Jackson's apartment named "Adell Lyles" and that Lyles had told a fellow inmate that he had committed a rape and robbery at Lake Castleton Apartments. Based on this information, Detective Buttram obtained a search warrant for Lyles' blood. The warrant was executed at the jail in April 2004.

Based on the results from the rape kit, spermatozoa were detected from S.T.'s vaginal/cervical swab and rectal swab, and seminal material was detected from S.T.'s

vaginal/cervical swab, external genital swab, and left buttock swab. Seminal material was also detected on S.T.'s underwear, her blue jeans, and the comforter. In June 2005, DNA testing confirmed that Lyles' DNA was in the sperm cells recovered from S.T.'s left buttock. Lyles was also a major contributor to the DNA found in the regular cells recovered from S.T.'s left buttock.

On September 6, 2006, the State charged Lyles with the following sixteen counts, many of which were enhanced because of the presence of a deadly weapon: Count I: Class A felony rape; Count II: Class A felony deviate sexual conduct (penis/anus); Count III: Class A felony deviate sexual conduct (firearm/anus); Count IV: Class A felony attempted deviate sexual conduct (mouth/penis); Count V: Class A felony burglary of Jackson's apartment; Count VI: Class B felony criminal confinement (Jackson); Count VII: Class B felony criminal confinement (Black); Count VIII: Class B felony criminal confinement (S.T.); Count IX: Class B felony robbery (Jackson); Count X: Class B felony robbery (Black); Count XI: Class B felony robbery (S.T.); Count XII: Class C felony battery (S.T.); Count XIII: Class D felony theft (Jackson); Count XIV: Class D felony theft (Black); Count XV: Class D felony theft (S.T.); and Count XVI: Class A misdemeanor battery (S.T.). Following a bench trial, Lyles was convicted of all counts except Count III (the count involving penetration of S.T.'s anus with the rifle).

At the sentencing hearing, the trial court identified as an aggravator that Lyles, who was eighteen years old at the time he committed the offenses but was twenty-three years old at the time of sentencing, had a history of criminal activity. Specifically, the court noted that in 2003, Lyles was convicted of theft, theft and receiving stolen property,

and felony auto theft, in 2004, he was convicted of public intoxication, and in 2006, he was convicted of felony possession of cocaine. The court also identified as an aggravator the nature and circumstances of the offenses:

> This was a particularly heinous and violent crime. In the sanctity of Mr. Jackson's home, you . . . broke into that home, bound, gag[g]ed, and blindfolded [S.T.]. [S.T.] was bound so tightly that she had nerve damage which took two years for her to begin having feelings in her . . . hands. She suffered lacerations and tears to her rectum, she suffers from posttraumatic stress disorder. The Prosecutor has just stated that [S.T.'s] been in counseling for the five years since this incident occurred. [S.T.] was not only raped by numerous men that night, but she was also humiliated by you and your cohorts. A shotgun was placed between her legs. There's no evidence that it was – penetrated, but it was placed between her legs, shaving cream was sprayed in her face. You all went into the kitchen and got eggs and smashed eggs all over her body. The level of violence . . . far exceeds that required for the commissions of these crimes.

Id. at 384-85. As for the offenses regarding Jackson, the court noted that Jackson was "bound and gag[g]ed and hogtied in his living room. . . . [H]e was beaten and hit as you all threatened him with your shotgun as you requested to find out where the safe was." *Id.* at 386. As for the offenses involving Black, the court noted "the heinous and violent nature of the confinement." *Id.* at 387. The court identified as a mitigator that Lyles was eighteen years old when he committed this "vicious" attack. *Id.* at 385. After vacating the theft convictions (Counts XIII, XIV, XV) on double jeopardy grounds, the court sentenced Lyles to forty years for the Class A felony convictions, ten years for the Class B felony convictions, four years for the Class C felony conviction, and one year for the Class A misdemeanor conviction. Despite the State's request for a 250-year sentence, the court ordered the sentences for Count I (involving S.T.), Count V (involving Jackson), and Count X (involving Black) to be served consecutively, with the sentences for the

remaining counts to be served concurrently, for an aggregate sentence of ninety years. Lyles now appeals.

Discussion and Decision

Lyles raises three issues on appeal, which we reorder as follows. First, he contends that the evidence is insufficient to support his convictions. Second, he contends that his convictions violate Indiana's prohibition against double jeopardy. Finally, he contends that his aggregate sentence of ninety years is inappropriate.

I. Sufficiency of the Evidence

Lyles contends that the evidence is insufficient to support several of his convictions. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

The evidence most favorable to the convictions is that a person with an identification card bearing the name "Adell Lyles" was found pacing near the scene of the crimes shortly after they occurred. In addition, in early 2003, Lyles told fellow inmate Fisher that he, his brother, and a friend robbed some people at Lake Castleton Apartments. Specifically, Lyles said that they tied up the occupants of the apartment. Next, all three of them raped a girl and ate some food but then panicked when there was a knock at the door, and they left behind some items, including a rifle, in the apartment. All of these statements are consistent with the evidence presented at trial about how the crimes occurred (from the binding of the victims, to the use of the rifle during the rape, to the security guard's knock on the door and the intruders' response to that knock), about the left-behind items in the pillowcases and trash bags and the drawstring bag on the lawn, and about the rifle left by the sliding glass door. Finally, Lyles' DNA was found in the sperm cells recovered from S.T.'s left buttock—the precise location where S.T. said the rapist had ejaculated. In other words, a person identifying himself as Lyles was found near the scene of the crime almost immediately after it occurred, Lyles' DNA was found on the victim, and Lyles confessed to the crimes. The evidence is sufficient.

Nevertheless, Lyles generally contests the credibility of inmate Fisher, points out the presence of other individuals' DNA in the rape kit items, highlights the absence of eyewitness identification, and suggests that the delay between receiving the DNA test results and the filing of charges against him undermines the reliability of the DNA results. As for the credibility of Fisher, the trier of fact—here, the trial court—was well aware of the circumstances under which the confession was made, and it was for the trier

of fact to decide whether Fisher was credible. As such, Lyles' argument is merely a request for us to reweigh the evidence, which we will not do. Regarding the presence of other individuals' DNA in the rape kit items, this is consistent with what happened: S.T. was violated by multiple people.[2] This does not make Lyles any less culpable for the role he played. The absence of eyewitness identification is largely due to the fact that the intruders selected people they did not know and then blindfolded them during the commission of the crimes to lessen the chances of identification. As for the delay, Lyles does not explain how the delay affects the DNA results, and nothing in the record gives any reason for questioning the reliability of these results.

Regarding the elements of several of his convictions, Lyles argues that the evidence does not prove that he was the specific person who performed the act and, therefore, the evidence is insufficient. This argument fails because of Indiana's accomplice liability statute, which provides:

> A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:
> (1) has not been prosecuted for the offense;
> (2) has not been convicted of the offense; or
> (3) has been acquitted of the offense.

Ind. Code § 35-41-2-4. It is well established in Indiana that "the responsibility of a principal and an accomplice is the same." *Taylor v. State*, 840 N.E.2d 324, 338 (Ind. 2006) ("[O]ne may be charged as a principal yet convicted on proof that he or she aided another in the commission of a crime."); *see also Whitener v. State*, 696 N.E.2d 40, 44 (Ind. 1998) ("[A] defendant may be convicted on evidence of aiding or inducing even

[2] A May 2007 supplemental lab report identified another contributor of the sperm as Marcel Tate, a DOC inmate. Ex. p. 109.

though the State charged the defendant as the principal"). The evidence indisputably shows that a group of several males acted in concert to commit these crimes: they entered the apartment as a group, ransacked the apartment and then took the victims' property as a group, and raped S.T. as a group—all while at least one of them was armed with a rifle. As such, it does not matter that the victims were unable to identify what specific intruder performed what specific act due to their blindfolds. "[A]n accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence of their concerted action." *McGee v. State*, 699 N.E.2d 264, 265 (Ind. 1998) (quotation omitted). In addition, it is not necessary that a defendant participate in every element of a crime in order to be convicted of that crime under a theory of accomplice liability. *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002), *reh'g denied*. Because Lyles is responsible for the acts of his accomplices, his sufficiency challenges to Counts II, IV, and XVI fail.

Specifically regarding Count V, Class A felony burglary, Lyles argues that because his fingerprints were not found on the rifle, and therefore there is no evidence tying him to it, this crime should not have been elevated from a Class C felony. Indiana Code § 35-43-2-1 provides:

> A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony. However, the offense is:
>
> (1) a Class B felony if:
> (A) it is committed while armed with a deadly weapon; or
> (B) the building or structure is a:
> (i) dwelling; or
> (ii) structure used for religious worship; and
> (2) a Class A felony if it results in:

(A) bodily injury; or
(B) serious bodily injury;
to any person other than a defendant.

Lyles' argument is misplaced. In the charging information, the State alleged that Lyles, while armed with a deadly weapon, broke and entered Jackson's dwelling with the intent to commit the felony of theft and that S.T. suffered bodily injury, specifically, pain and bruising. To sustain the A felony enhancement, the State had to prove bodily injury to S.T., which it did. Lyles does not contest this. Accordingly, Lyles' argument fails. If the State had only sought the Class B felony enhancement for the use of the deadly weapon, it makes no difference that Lyles' fingerprints were not found on the rifle. As explained above, the responsibility of a principal and an accomplice is the same. According to the victims' testimony, the first intruder to enter the apartment did so with a rifle, which was then left behind in the apartment, and the intruders then took the victims' property. We therefore affirm Lyles' conviction for Class A felony burglary.[3]

Lyles next challenges his convictions for Counts VI, VII, and VIII, the Class B felony criminal confinements of Jackson, Black, and S.T. He argues that "[n]obody testified the rifle . . . was even used in the confinement. Therefore, at most this should be a D felony." Appellant's Br. p. 13. Indiana Code § 35-42-3-3 provides that a person who knowingly or intentionally confines another person without the other person's consent commits criminal confinement, a Class D felony. It is a Class B felony if it is committed while armed with a deadly weapon. Ind. Code § 35-42-3-3(b)(2)(A). Contrary to Lyles'

[3] In a related argument, Lyles challenges his conviction for Count XII, battery as a Class C felony, arguing that nothing ties him to the rifle (which elevated the crime from a Class B misdemeanor). Because the responsibility of a principal and an accomplice is the same, Lyles' challenge to this conviction equally fails.

argument, all the victims testified that the first intruder entered the apartment with a rifle and then ordered them to get on the ground. At this point, the victims were confined. The evidence is sufficient to support Lyles' convictions for Class B felony criminal confinement.

Lyles next challenges his convictions for Counts IX and XI, the Class B felony robberies of Jackson and S.T. Specifically, he argues that there is no testimony indicating that the rifle was used in robbing either Jackson or S.T. He concedes, however, that Black testified that the men had the rifle with them when they took his property. Appellant's Br. p. 14. Indiana Code § 35-42-5-1 provides:

> A person who knowingly or intentionally takes property from another person or from the presence of another person:
>
> (1) by using or threatening the use of force on any person; or
> (2) by putting any person in fear;
>
> commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Class A felony if it results in serious bodily injury to any person other than a defendant.

Here, the State charged Class B felonies based on the fact that Lyles was armed with a deadly weapon. We first point out that Jackson did indeed testify that a gun was pointed at him while the intruders were demanding his property. *See* Tr. p. 79. In any event, it is undisputed that the first intruder entered the apartment while armed with a rifle and that shortly thereafter, Jackson, Black, and S.T. were blindfolded and bound, thus hindering their ability to see. Next, the intruders took property from them, and we know that a gun was used during the process of the ransacking and stealing. Based on this sequence of

events, the evidence is sufficient to support Lyles' convictions for the Class B felony robberies of Jackson and S.T.

As a final matter, Lyles argues that because the rifle was allegedly unloaded and broken, it does not qualify as a deadly weapon and therefore cannot be used to enhance many of his convictions. The record indicates that, although the rifle did not have a magazine in it and the stock was cracked, it was in one piece until the evidence technician placed it in a property box and it had a live round chambered in it. In any event, by definition, a "deadly weapon" is a "loaded or unloaded firearm" or any device "that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury." Ind. Code § 35-41-1-8(a). Even an inoperable gun can constitute a deadly weapon under the statute. *See Davis v. State*, 835 N.E.2d 1102, 1112 (Ind. Ct. App. 2005), *trans. denied*; *Merriweather v. State*, 778 N.E.2d 449, 458 (Ind. Ct. App. 2002). Accordingly, the evidence is sufficient to prove the deadly weapon enhancements.

II. Double Jeopardy

Lyles next contends that many of his convictions violate Indiana's prohibition against double jeopardy. Article I, § 14 of the Indiana Constitution, Indiana's Double Jeopardy Clause, provides, "No person shall be put in jeopardy twice for the same offense." The Indiana Supreme Court set forth two analyses for double jeopardy claims under our state constitution in *Richardson v. State*, 717 N.E.2d 32, 49 (Ind. 1999). In *Richardson*, our Supreme Court established that two or more criminal offenses violate our Double Jeopardy Clause if, with respect to either the statutory elements of the

charged offenses or the actual evidence used to convict, the essential elements of one challenged offense establish the essential elements of the other offense. *Id.* Under the "actual evidence" test, "the evidence presented at trial is examined to determine whether each offense was proven by separate and distinct facts." *Storey v. State*, 875 N.E.2d 243, 248 (Ind. Ct. App. 2007) (citing *Richardson*, 717 N.E.2d at 53), *trans. denied*. When a defendant makes the claim that two or more convictions violate the "actual evidence" test, he or she must demonstrate a "reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense." *Richardson*, 717 N.E.2d at 53. We now proceed to address Lyles' specific arguments.

A. Class A Felony Rape and Class A Felony Burglary

Lyles argues that his convictions for Class A felony rape and Class A felony burglary violate the actual evidence test. The charging information for Count I: Class A felony rape alleges that Lyles, while armed with a deadly weapon, knowingly or intentionally had sexual intercourse with S.T. when S.T. was compelled by force or imminent threat of force. The charge was elevated to a Class A felony because Lyles was armed with a deadly weapon. *See* Ind. Code § 35-42-4-1(b)(2). The charging information for Count V: Class A felony burglary alleges that Lyles, while armed with a deadly weapon, broke and entered Jackson's dwelling with the intent to commit the felony of theft and that S.T. suffered bodily injury during the commission of the offense, specifically, pain and bruising. The charge was elevated to a Class A felony because of bodily injury to S.T. *See* Ind. Code § 35-43-2-1(2)(A).

Lyles argues that there is a double jeopardy violation under the actual evidence test because the trial court used the injuries S.T. suffered from the rape as the basis for its enhancement of the burglary. However, this is not the case. Although the rape could have been elevated to a Class A felony based on *serious* bodily injury, *see* I.C. § 35-42-4-1(b)(3), the State sought to enhance the rape to a Class A felony based on the fact that Lyles was armed with a deadly weapon. Therefore, evidence that S.T. experienced bodily injury was only used to prove burglary. Evidence that S.T. was compelled by force or threat of force during the rape is not the same thing as evidence that she also suffered bodily injury when she was bound and gagged. Accordingly, there is no double jeopardy violation.

B. Use of Same Deadly Weapon

Lyles next argues that his convictions with respect to each separate victim violate double jeopardy because the offenses are enhanced due to the use of the same deadly weapon. In *Miller v. State*, the Indiana Supreme Court clarified that the repeated use of a weapon to commit multiple crimes may separately enhance the level of each offense without constituting double jeopardy. 790 N.E.2d 437, 439 (Ind. 2003). Here, there is evidence that the rifle was repeatedly used throughout the forty-five minute crime spree. Accordingly, Lyles' convictions do not violate double jeopardy and were properly enhanced due to his use of the same deadly weapon.

C. DNA Evidence

Finally, as best as we can tell, Lyles argues that his twelve convictions violate the actual evidence test because the same evidence—the DNA evidence—was used to

convict him of all the offenses. We first note that the DNA evidence was not the only evidence connecting Lyles to the scene or establishing his identity as one of the perpetrators. There was also his detailed confession to Fisher, in which he admitted to much more than the rape, and the evidence that a person who identified himself as "Adell Lyles" was found near Jackson's apartment shortly after the intruders fled. Far more fundamentally, however, the actual evidence test is only violated when there is a "reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense." *Richardson*, 717 N.E.2d at 53. The DNA evidence establishing Lyles' identity as one of the perpetrators was necessary to connect him to the crimes, but that evidentiary fact, standing alone, did not establish all of the elements of the charged offenses. Jackson's, Black's, and S.T.'s testimony established those elements. There is no double jeopardy violation.

III. Inappropriate Sentence

Lyles contends that his aggregate sentence of ninety years is inappropriate in light of the nature of his offenses and his character pursuant to Indiana Appellate Rule 7(B). Appellate Rule 7(B) provides, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

We first point out that Lyles only received enhanced sentences for his Class A felony convictions; he received presumptive[4] sentences for his remaining convictions. In addition, the trial court only ordered three of his twelve sentences to be served consecutively, even though most of his crimes qualify as "crimes of violence," and his sentences could have been run consecutively without running afoul of the "episode of criminal conduct" limitation. *See* Ind. Code § 35-50-1-2(c). In other words, Lyles faced a nearly three-hundred-year sentence but received only a sentence of ninety years. It is the State's position that Lyle's sentence "is inappropriate only in that it is inappropriately lenient."[5] Appellee's Br. p. 15.

As even Lyles concedes, the nature of his offenses is "horrible." *See* Appellant's Br. p. 17. Lyles and his accomplices, while armed with a rifle, broke and entered an apartment while friends from high school were watching a movie. They ordered everyone to lie on the ground and proceeded to blindfold and bind them. They took their wallets, keys, cash, bank cards, cell phones, and jewelry. Lyles undressed and raped a young woman, and either Lyles or one of his accomplices proceeded to perform anal intercourse on her, put a gun between her legs, and attempted to force her to perform oral sex. Lyles or one of his accomplices hit S.T. when she tried to resist the various sex acts. They even covered her with shaving cream and eggs. They were only stopped in their crime spree when a security guard knocked on Jackson's apartment door. Even at the

[4] We note that although Lyles was sentenced in November 2007, his crimes occurred in June 2002, which is before the amendments to our sentencing statutes. Therefore, the presumptive sentencing scheme applies. *See Gutermuth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (noting that the sentencing statute in effect at the time a crime is committed governs the sentence for that crime).

[5] The State does not cross-appeal this issue.

time of sentencing, approximately five years after the crimes, the victims were still suffering from the emotional after-effects, and all three had been diagnosed with post-traumatic stress disorder and were receiving treatment.

Lyles' suggestion that his sentence is inappropriate because multiple people committed the offenses but only he has been punished is completely without merit. The record is clear that Lyles was an active participant in these crimes, and his sentence is appropriate based on the role he played. As the State points out, "Criminal sentencing is not a zero-sum game, and sentences are not apportioned out among the perpetrators." Appellee's Br. p. 15. The State then welcomes Lyles to identify his accomplices so that it can prosecute them as well.

Lyles' sentence is also not inappropriate based upon his character. Although Lyles was only eighteen years old at the time he committed these crimes, which the trial court recognized as mitigating, by the time of sentencing, he had amassed a sizable criminal record consisting of two felony convictions and approximately four misdemeanor convictions. In addition, Lyles violated his probation on three separate occasions, was "kicked" out of high school, has never received his GED, and has no employment history to speak of. PSI p. 14. There is nothing about Lyles' character that renders his sentence inappropriate. Lyles has failed to persuade us that his aggregate sentence of ninety years is inappropriate.[6]

[6] To the extent that Lyles makes a separate argument that the trial court erred in ordering three of his sentences to be served consecutively, we note the following, "It is a well established principle that the fact of multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive or enhanced sentences." *O'Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001). In imposing consecutive sentences for Counts I, V, and X, the court noted that consecutive sentences were warranted because of "the fact that there were multiple victims, . . . the fact that these

Affirmed.

MAY, J., and MATHIAS, J., concur.

crimes took place . . . at multiple times, and multiple rooms, and multiple locations in that apartment." Tr. p. 389. The trial court did not err in ordering consecutive sentences.